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PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Special Commission 4

PROVISIONAL REPORT OF SPECIAL COMMISSION 4

(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)

Addendum*

REPORT ON PRINCIPLES GOVERNING A RELATIONSHIP AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA AND THE INTERNATIONAL SEABED AUTHORITY

(LOS/PCN/SCN.4/WP.10/Add.1)

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* This working paper also constitutes addendum 5 to document LOS/PCN/SCN.4/WP.15, which was not previously issued as a separate document.

Introductory note

The principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority were considered by Special Commission 4 on the basis of the working paper prepared by the Secretariat contained in document LOS/PCN/SCN.4/WP.10. The deliberations of the Special Commission on the subject are reflected in the Chairman's summary of discussions, as contained in document LOS/PCN/SCN.4/L.17.

The Special Commission decided that there was no need to present the outcome of the deliberations in the form of a draft agreement on these issues since no conclusions had been reached on the working paper and since it would not be possible to cover every issue on which a relationship arrangement might have to be regulated. The Special Commission thus mandated the Secretariat to prepare a "Report on the principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority" taking into consideration the deliberations of the Special Commission. In this regard it was agreed to reflect, in a concise manner, only those matters which would provide a better perspective of the issues. The present working paper constitutes the response thereto.

CONTENTS

		Paragraphs	Page
Introduction		1 - 2	4
A. General comments		3	4
B. Specific comments		4 - 22	4
Section I.	Preamble	4 - 5	4
Section II.	Governing principles and mutual recognition of responsibilities, rights and obligations	6	5
Section III.	Consultation, cooperation, coordination and recommendations	7 - 11	5
Section IV.	Exchange of information and documents	12 - 14	6
Section V.	Reports	15 - 16	6
Section VI.	Administrative cooperation and personnel arrangements	17 - 18	7
Section VII.	Budgetary and financial arrangements	19 - 20	7
Section VIII.	General	21 - 22	8

Introduction

1. Special Commission 4 considered 1/ a working paper entitled "Principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority", prepared by the Secretariat (LOS/PCN/SCN.4/WP.10). The Chairman's summary of discussions thereon is contained in document LOS/PCN/SCN.4/L.17.

2. The Special Commission took note that a relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority should be considered in the context of precedents, primarily under Article 57 of the Charter of the United Nations, and other existing relationship arrangements. The Special Commission did not attempt to reach any conclusions, nor did it attempt to formulate texts. Instead, it examined the functions of the International Tribunal for the Law of the Sea (hereinafter referred to as "the Tribunal") and those of the International Seabed Authority (hereinafter referred to as "the Authority") in so far as they would be relevant to each other and to establishing a relationship between them. The Special Commission identified the type of issues that could be covered in a relationship agreement.

A. General comments

3. The Commission considered whether there was a precedent for empowering two institutions created by the same convention to conclude a further agreement between themselves. While it was exceptional for a single convention to establish more than one international institution, several delegations felt that such an agreement could be concluded. However, one delegation doubted whether there was really a need. It was considered important to ensure that the independence of the Tribunal should be maintained and that its decision-making should not be influenced by any other institution. Yet there was a need to establish a link which would permit cooperation, since the Tribunal and the Authority were completely independent of each other. One view was that there was limited need for such cooperation since it should only relate to administrative matters. Mere reiteration of the Convention's provisions that require interaction between them should also be avoided, given that the Tribunal and the Authority had a common constitutive instrument.

B. Specific comments

Section I. Preamble

4. It was stressed in this context as well that the Tribunal and the Authority had common roots in the Convention. Therefore, the preamble should merely contain a reference to that effect. It was noted that the Tribunal should appropriately be referred to as a judicial body since it was not an

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1/ At its 124th and 125th meetings of the eighth session.

international organization in the normal sense. The agreement therefore would not be one between two international organizations of a global character.

5. There should be an expression in the preamble of the desire to secure an effective relationship and thereby to facilitate the discharge of the responsibilities of each institution. It should also be noted that each organization, within its sphere of activity, would contribute to the objectives set out in the preamble to the Convention.

Section II. Governing principles and mutual recognition of responsibilities, rights and obligations

6. In this context as well, it was felt that the Tribunal should be defined as a judicial "body" or "institution" and that there should, in the view of one delegation, be an elaboration of the capacity of the Tribunal to conclude agreements. Notwithstanding that since the Tribunal and the Authority have their powers defined under the same Convention, which creates them, it appears desirable for each to recognize the character and responsibilities of the other.

Section III. Consultation, cooperation, coordination and recommendations

7. Consistent with the practice, it was understood that the arrangements should reflect the important need for the Tribunal and the Authority to consult and cooperate on matters of mutual interest. The cooperation extended by each institution to the other should extend not only to those matters on which clearly defined functions are allocated to each of them, but should also extend to a cooperative relationship whereby each could facilitate the activities of the other.

8. Bearing in mind that decisions of the Seabed Disputes Chamber in connection with cases of non-compliance are to be implemented by the Council, there is a need for cooperation and consultation. So also, in the process of the selection of the members of the Seabed Disputes Chamber from among the members of the Tribunal, the Assembly has to adopt recommendations of a general nature relating to the representation of the principal legal systems of the world and equitable geographic distribution that is to be assured. For this purpose as well, there would appear to be a need for consultation and cooperation between the Tribunal and the Authority in ensuring that the Assembly is possessed of all necessary information to adopt a recommendation which can be given effect by the Tribunal. The importance of such arrangements, which call for consultations between the two institutions, was underlined.

9. One view expressed was that cooperation should be confined to the cases where the Convention required it, and the Tribunal and the Authority could be left to work out the details of cooperation at a later stage.

10. Since their activities are disparate in most respects, a relationship arrangement between the Tribunal and the Authority may not need to provide for coordination of activities as envisaged according to the usual practice of relationships between international organizations.

11. Some emphasis was placed on the fact that the Tribunal, as an independent judicial body, could pass judgement on the actions and activities of the Authority, and thus should not be influenced by the Authority. The essence of a relationship agreement then was that one institution could facilitate the activities of the other and arrangements were needed to make this feasible.

Section IV. Exchange of information and documents

12. The Tribunal and the Authority could be expected to secure the regular exchange of current information of mutual interest. A free exchange of information was desirable and cooperation aimed at the exchange of information, for instance, was one of the natural areas of cooperation between these institutions. It would entail minimal financial implications. It was felt that if these institutions held back information from each other it could lead to problems.

13. It was acknowledged that there would be several situations where the exchange of information would facilitate the functioning of these organizations and where the interaction in their activities would give rise to the desirability of sharing of information. While the view was expressed that administrative regulations might not be required for the exchange of information and documents, it was understood that it may be in the interests of the Tribunal and Authority to do so. The Authority would ensure that the Tribunal is provided with necessary information and materials to deal with urgent situations, including especially those which threaten the environment. However, in one view, the exchange of information should be limited to administrative matters, and should not involve information regarding matters which are sub judice in respect of which the Tribunal may exercise its judicial functions and which could result in the Tribunal being influenced by the Authority.

14. While not opposed in principle to the exchange of information, one delegation could not conceive what type of information the Tribunal could present to the Authority. It was noted that the Authority was political in nature whilst the Tribunal was purely judicial and that the essential character of the two institutions should be maintained, while the independence of its members had to be preserved.

Section V. Reports

15. The question of reports being submitted by one international body to another with which it has a relationship agreement, either mesomotu or on its own initiative, was considered in the context of the Tribunal and the Authority. Consideration was given to the possibility, for instance, that the Authority may wish to have a report on the basis of which it could review the jurisprudence of the Tribunal and particularly the Seabed Disputes Chamber, so as to minimize the

likelihood of disputes arising as a result of factors within the control of the Authority and its organs. A counter view was that there was no need for the Tribunal to report to the Authority on its jurisprudence. While no clear need was seen for a separate treatment of reports, it was proposed that they be dealt with in context of the exchange of information and documents. Concern was expressed for the risk that reporting would impinge on the independence of the Tribunal.

16. Another view expressed was that the Tribunal should not furnish special reports to the Authority since it could leave the Registry overloaded with work.

Section VI. Administrative cooperation and personnel arrangements

17. In the context of the administration and personnel management of the Registry of the Tribunal and the Secretariat of the Authority, it was generally considered desirable, with a few reservations, to have some measure of uniformity as regards terms and conditions of service, levels of appointment and retirement benefits for staff. This would be facilitated by cooperation.

18. In cases of alleged violations by staff members of their obligations to the Authority under article 168, paragraph 3, the Seabed Disputes Chamber was considered to be the appropriate forum for adjudication. It was certainly contemplated in the negotiations that the tribunal of choice should be the International Tribunal for the Law of the Sea. The United Nations Administrative Tribunal and the World Bank Administrative Tribunal would be excluded from consideration as their statutes did not give them the competence to deal with cases where States Parties may institute proceedings against staff as permitted under these provisions of the Convention. However, some had misgivings about the Tribunal acting as the court of first instance in disputes involving the Authority and its staff, though it could act in an appellate capacity. In either case it would open another area for cooperation and consultation.

Section VII. Budgetary and financial arrangements

19. Some concern was expressed concerning the establishment of "close budgetary and financial relationships" between the Tribunal and the Authority since it could be interpreted to mean that the Authority and the Tribunal were financially dependent on each other. The very need for a close relationship was questioned and it was suggested that there should only be a provision on how contribution by the Authority to the Tribunal's budget would be made. In that connection, it was noted that a more effective mechanism than consultation was needed to determine the level and method of payment of the Authority's contribution to the Tribunal's budget.

20. The position taken by one delegation was that while article 19, paragraph 1, of the Statute provided for the contribution to the costs of the Tribunal by the Authority, that relationship should not prejudice the independence of the Tribunal, e.g., the Authority should not be allowed to restrict its contributions to the Tribunal's budget when it was dissatisfied with the latter's judgements.

Section VIII. General

21. Supporting the note at the end of the working paper (LOS/PCN/SCN.4/WP.10, para. 24) that "most of the instances cited ... could be brought under a single broad definition of cooperation, consultation and exchange of information", some delegations considered it unnecessary to carry out a detailed consideration of the issues as currently contained in the working paper.

22. Several categories of relationship activity were examined and identified for consideration as appropriate and for inclusion in an arrangement between the Tribunal and the Authority.